



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.517 OF 2017

&

CRL.M.P.NOS.371 & 372 OF 2017

Bernard Robert Hereford,
S/o. Late E.J.Hereford

... Petitioner/Accused 13

.Vs.

The Deputy Registrar of Companies,
Tamil Nadu, Chennai,
Having office at II Floor,
Shastri Bhavan, 26, Haddows Road,
Nungambakkam, Chennai - 600 006.

... Respondent/Complainant

PRAYER:- Criminal Original Petition filed under Section 482 Cr.P.C to call for the records in E.O.C.C.No.198 of 2013 pending on the file of Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai and quash the same.

For Petitioner : Mr.M.Mohammed Rafi

For Respondent : No Appearance

ORDER

This petition has been filed to quash the private complaint filed against the petitioner, who has been arrayed as A13, which was taken on file by the Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai in E.O.C.C.No.198 of 2013.

2. The crux of the allegation is that clause 4 of the Articles of Association has been amended by the resolution passed at the EGM held on 05.03.2002 without the approval of Central Government as provided under Regulation 13 of the Companies Regulations, 1956 and hence, the Company has contravened the provisions of Section 25 read with Section 31 of the Act resulting in launching of prosecution against the petitioner and other accused.



3. A perusal of the complaint reveals that totally 17 people have been arrayed as accused. It appears that out of seventeen, eight of them are ex-directors and all others are said to be Directors of the first accused. The entire allegation in the private complaint does not make any specific averments against any of the accused therein. Further, no allegation is made against the present petitioner for his role in making an amendment without the approval of the Central Government. The amendment has been made in pursuant to the resolution based on Extra General Body Meeting held on 05.03.2002. The only grievance of the respondent is that the same was made without the approval of the Central Government. It is also brought to the notice of the Court that at the relevant point of the amendment, the petitioner was not a director of the company. He was inducted as a director only on 26.04.2010 and resigned from the post on 11.02.2014, Form No.DIR-11 is also available on record, which has not been disputed by the other side.

4. Though it is the contention of the learned counsel appearing for the respondent that the administration of the company has not been properly done and the elections have not been conducted as per the Act, to invoke the penal provisions against the petitioner, it should be shown by the respondent that on the date of the alleged resolution or violation, the petitioner was the director or responsible for the affairs of the company. In similar nature of cases, this Court in CrI.O.P.Nos.21861 to 21865 of 2016 has quashed the proceedings initiated against the present petitioner mainly on the ground that he became the Director of the Church of South India Trust Association on 26.04.2010 and resigned from the directorship on 11.02.2014 and on the date of violation he was not a director. The complaint in the present case is with regard to the alleged violation occurred on 05.03.2002, at the relevant date the petitioner was not the director at all and the prosecution is certainly not maintainable.

5. Accordingly, this Criminal Original Petition is allowed and the proceedings in E.O.C.C.No.198 of 2013 pending on the file of learned Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa/gba



To

1. The Additional Chief Metropolitan Magistrate
(Economic Offences-II),
Egmore, Chennai.

2. The Deputy Registrar of Companies,
Tamil Nadu, Chennai,
Having office at II Floor,
Shastri Bhavan,
26, Haddows Road,
Chennai - 600 006.

3. The Public Prosecutor
Madras High Court,
Chennai - 104.

+1cc to Dr.D.Simon, CGSC, S.R.No.1341

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KV (CO)
PBS/27/01/2022